

APPROVED: Meeting No. 44-82

ATTEST: *Helen M. Heneghan*

MAYOR AND COUNCIL

ROCKVILLE, MARYLAND

MEETING NO. 42-82

November 22, 1982

The Mayor and Council of Rockville, Maryland, convened in general session in the Council Chamber, Rockville City Hall, Maryland at Vinson Street, on Monday, November 22, 1982, at 8:00 p.m.

Mayor John R. Freeland

Councilman Douglas Duncan

Councilwoman Viola Hovsepian

Councilman John Tyner, II

ABSENT

Councilman Steve Abrams

The Mayor in the Chair.

In attendance: City Manager Larry Blick; City Clerk Helen Heneghan; City Attorney Paul Glasgow.

Re: City Manager's Report

Mr. Blick reported the following:

1. Leaf collection has been delayed this year because all of the leaves fell at one time. There were a few equipment failures, they were at a minimum, and at the same time the staff has attempted to keep overtime at a minimum. Within one week the City will be back on schedule in collection.

2. Last week, the Traffic and Transportation Commission and the Planning Commission held a joint session to discuss the Martins Lane extension proposal. It was the consensus of the Commissions that the cost is prohibitive and the project has been deferred indefinitely.

The Mayor asked the City Manager if he knows the status of the joint meeting between the Rockville Housing Authority and the Human Rights Commission. Mr. Horne said the chairmen were to meet and he will return with a report when they decide. The Mayor said at the time there is a joint meeting, members of the Mayor and Council would like to attend. Councilman Tyner added that he would not only like the date of the meeting, but also the action plan from the commissions when it is developed.

Mayor Freeland said that last week he attended the space shuttle landing at Edwards Air Force Base in California at the invitation of NASA. It was a spectacular sight to witness the touchdown. The participants were briefed on the entire project and the technological capabilities. He was particularly interested in the

infra-red monitoring of heat loss that can take place.

Re: Citizen's Forum

The Mayor opened the meeting to those citizens who wished to address the Mayor and Council.

1. Vincent Ferretti, attorney for S. Young, owner of the Hunan Restaurant on Rockville Pike. Mr. Ferretti told the Council that the trees in front of the Hunan Restaurant were inadvertently cut down without a permit. However, Mr. Young will see that replacement trees will be planted.

2. Robert Weirich, Peerless Rockville. Mr. Weirich thanked the Mayor and Council for arranging the charette that was held between the members of Peerless and interested parties, particularly the neighborhood. He said one result was the breakdown of the contract with Mr. Cantelon and negotiations have begun with a family who wished to use the property as a residence. He recommended that the record be held open for a week and that the Mayor and Council delete the commercial use on the application.

On motion of Councilman Duncan, duly seconded and passed by unanimous vote of all present, the record was opened to include the remarks made by Mr. Weirich this evening and held open for an indefinite period. Mayor Freeland asked that the neighborhood be notified of the reopening of the record. Mr. Blick requested that the Council move at this time to delete the commercial aspect of the application. Mayor Freeland disagreed and said it should be left as is and the neighborhood informed that the Mayor and Council hope that the residential application will be suitable. When it is time for a decision to be made, amendments to the application can be made, since at this time, the Mayor and Council do not know the outcome of the negotiations. He thanked all the participants and commended Mr. Robert Lanham who worked as a facilitator.

3. Ann Heavey, 306 West Edmonston Drive. Miss Heavey asked the Mayor and Council if it is possible for the City to sell the property directly and use the money as it sees fit since the property sits in City park land and she wonders why a private organization is allowed to make a profit on the transaction. Mayor Freeland said the City is not in a position to act in the best interests of historic preservation. It is better to save tax payer dollars and turn the property over to Peerless Rockville for negotiations and ultimately the City will be better off.

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Mrs. Heavey said the neighborhood had a builder look at the property this weekend and when he saw the bad shape it was in he assessed restoration costs to be in the neighborhood of \$100,000. The builder suggested it is better to raze the house and build a replica.

4. Howard Silberstein, 2008 Dundee Road. Mr. Silberstein drew the Council's attention to the Minutes of October 18 in which his comments were incorrectly recorded. He had referred to the City's housing policy not being goal oriented. He noted that tonight the Mayor and Council will be working on a housing paper not a housing policy and that the goal should be no resident of Rockville goes without housing.

5. Christopher Diebler, 707 Brent Road. Mr. Diebler said he had requested a permit to heavy up the electrical service in his home and the permit was denied. He referred to the section of the ordinance which denies it and asked why this is so. The Mayor asked that the City Manager get back to Mr. Diebler with a report.

There being no other citizen wishing to be heard, the Mayor closed the Citizen's Forum portion of the meeting.

Re: Introduction of Ordinance:
To grant Map Amendment
Application, M-32-81, Pepsi-Cola Bottlers, Inc., Cheverly, Md., Applicant, requesting the property consisting of 69,363 sq. ft. of land located at the corner of Chapman Ave. and Twinbrook Pkwy, be rezoned from the I-1, Service Industrial to the C-2, General Commercial Zone

On motion of Councilman Duncan, there was introduced upon the table, an ordinance granting Map Amendment Application, M-32-81, Pepsi-Cola Bottlers, Inc., requesting land located at the corner of Chapman Ave., and Twinbrook Parkway be rezoned from I-1 Service Industrial to the C-2 General Commercial Zone, said ordinance to lay over one week before final adoption is granted.

Re: Introduction of Resolution:
To amend Article XI of the Charter of the City of Rockville by amending subsections a., b., d., and h., of Section 1 thereof, so as to add to and expand upon the types of public improvements and the purposes thereof which may be the subject of special assessments, to authorize the temporary exemption of certain properties from assessments, to provide for the taking of a "B" rule appeal from a special assessment, to delete the 10 year limitation on assessments of permanent repairs, and to authorize the assessment of periodic, continuing, and on-going repairs and maintenance of public improvements.

On motion of Councilman Tyner, there was introduced upon the table a Resolution to amend the Charter of the City of Rockville. A public hearing on this Charter amendment will be held on January 17, 1983.

Re: Introduction of Ordinance:
To amend Section 2-203(a) of Chapter 6, Zoning Ordinance, of the "Laws of Rockville", to clarify the powers and duties of the City of Rockville Board of Appeals.

On motion of Councilman Duncan, there was introduced upon the table, an ordinance amending Section 2-203(a) of Chapter 6, Zoning Ordinance, said ordinance to lay over one week before final action is taken.

Mayor Freeland recognized the Chairman of the Board of Appeals, Mr. Arkin, in the audience and asked if he wished to speak on this ordinance. Mr. Arkin said he is not speaking as chairman since he has had no opportunity to discuss this with the Board of Appeals and was not knowledgeable of the ordinance prior to this evening. He said he has several questions. One is he does not know when this ordinance will take effect and that must be addressed. Mr. Arkin said this past summer a case on signs came before the Board of Appeals and the Board of Appeals addressed the question of density. There is now a new case before the Board involving a sign. He said in light of that it is difficult to ascertain the effect of this ordinance and how a decision can be made. Is a

decision made on the law at the time of the filing of an application or the law in effect at the time a case is heard or the law in effect at the time a decision is made. He questions whether a City ordinance can repeal a State granted constitutional privilege. He added several other concerns on this ordinance.

Mayor Freeland said a normal lay over period would cause this ordinance to be adopted after the Board of Appeals meeting. He had hoped that the Board and the City Attorney could meet to work out something by which the Board would not grant waivers for signs. He alerted the Board of Appeals this weekend to this ordinance so they could be present this evening and comment. He added how happy he is to see the entire Board and its alternate, Mr. Woodward, present this evening. The City Attorney explained that this evening's ordinance reflects no change in the law, it is simply a reiteration and clarification of a law that already exists. Irrespective of this ordinance, the law stands and should be implemented at the time a decision is made. Mayor Freeland asked the City Attorney what the situation would be if this ordinance is passed or if it is not passed. The City Attorney said this ordinance presents no change and does no violence to the existing law. The law that is in effect governs disposition at that time. This ordinance simply represents a clarification to the zoning ordinance, not a change in the law. Mayor Freeland said that it was his hope that the Mayor and Council could establish a working arrangement to keep the Board and the Mayor and Council in harmony as he believes the Board requested at the time of the annual meeting. Mr. Arkin said that is definitely the wish of the Board. He asked that the City Attorney include in the memo, which he will be sending to the Board with the new ordinance, some back up material to elaborate on his comments this evening. Councilwoman Hovsepien asked why it was not possible for the Board of Appeals to get together with the City Attorney following the Mayor and Council's instructions, and stated she thought a copy of the revised ordinance should have been sent to the Board. Mr. Arkin said he felt the contact with the City Attorney in light of the pending cases would be ex parte communication and raise the question of fundamental fairness since no one from the applicant's office would be present.

Peter Hartogensis, member of the Board of Appeals, addressed the Council and said that ambiguity is present in the existing law and the entire thing caught the Board by surprise. He said the ordinance this evening is a clarification and as a member of the Board, he appreciates that clarification; however, he does not know how the Board will respond to it and what the decision will be on December 4.

On motion of Councilwoman Hovsepian, duly seconded and passed by unanimous vote of all present, the Council agreed to waive the lay over period and the advertising requirements to act on the ordinance this evening.

Ordinance No. 36-82

On motion of Councilwoman Hovsepian, duly seconded and passed by unanimous vote of all present, Ordinance No. 36-82, the full text of which can be found in Ordinance Book No. 11 of the Mayor and Council, clarifying the duties of the Board of Appeals, was adopted by the Mayor and Council.

Re: Introduction of Ordinance:
To adopt a revision section
of the Master Plan entitled
"History of Development"

On motion of Councilman Duncan, there was introduced upon the table an ordinance adopting a revision section of the Master Plan, said ordinance to lay over one week before final action is taken.

Councilman Duncan asked the status of the work program. Mr. Davis said it should be completed in April.

Re: Review of Expenditures and
Revenues Analysis for proposed
addition to the Municipal Swim-
ming Pool, prior to advertising
for bids

The Mayor and Council authorized in the Capital Improvement Program the addition of an indoor pool to the swim center. In light of the revenue short fall during Fiscal '82, the City Manager asked the Director of Recreation and Parks in conjunction with the Budget and Research staff to review revenue and expenditure forecasts. A memorandum submitted to the Council represents the staff's latest opinion on the ability of the City to finance an addition to the swim center. The City Manager asked that the Mayor and Council consider that the City will never again be able to construct an additional pool at the price which will likely be reflected in the highly competitive bidding situation in December or January of this year. When the addition is completed it will dramatically improve the City's ability to sell additional memberships. It is possible at this time for the City to explore creative financing and membership packaging strategies. For example, interest costs might be significantly reduced through a sale and lease back arrangement. Donations could be attracted thereby giving individuals income tax breaks and at the same time allowing them to recover a portion of the donation through discounted memberships in the future. The staff

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recommends that the City proceed to advertise the construction bids with the intent of awarding the construction contract in January 1983. The City Manager asks that up to \$1,500 be spent to explore the legal and financial technicalities of financing techniques.

Councilwoman Hovsepien noted that there are many demands on the City's taxes. This might be looked at as just another recreational expense; however, the construction alone will answer some of the need that exists for jobs and can become a vital contribution to the economy in providing those jobs. For that reason she feels she can move ahead. The Mayor agreed and noted the therapeutic as well as recreational value that this brings to the citizens of Rockville.

On motion of Councilman Duncan, duly seconded and passed by unanimous vote of all present, the staff was authorized to proceed with the advertising and to spend up to \$1,500 in the exploring of creative financing.

Re: Approval of City/County Agreement for Maryvale School Property

The Mayor & Council discussed the present status of the contract negotiations including the indemnification portion for the Church development and the release agreement. The City Manager noted the purpose from the beginning has been to get the building torn down as the neighborhood wanted and the County does want the City to assume the \$78,000 debt service from the State. Councilman Duncan said the question of eliminating the indemnification clause could lead to further problems causing the County to void the agreement. The City Manager suggested that since there are still questions to be answered, that the Council's decision be postponed until December 6. The Mayor and Council agreed to this. The Mayor said it is not the Council's intent to upset the understanding with the County. Councilman Tyner agreed and asked the staff redouble its efforts to maintain the County's position.

Re: Review of provisions to be contained in proposed Landlord/Tenant legislation

At its meeting of September 20, 1982, the Mayor and Council discussed the subject of landlord/tenant policies and procedures within the City of Rockville and how these issues are handled by other jurisdictions, including Montgomery County. As a result of their discussion, the Mayor and Council instructed the staff to begin preparation of appropriate legislation which would establish

formal procedures for dealing with landlord/tenant matters. It was suggested that the legislation include a landlord/tenant commission which would adjudicate complaints after the completion of a staff investigation in a manner similar to that of Montgomery County.

The draft ordinance proposes the creation of a seven member Commission on Landlord/Tenant Affairs. Two members of the Commission are to be landlords, two members are to be tenants, and three members are to be selected from the public at large. One alternate member from each group is also to be appointed in order to assure adequate representation of each group in the event of the absence of a regular member.

The Commission is to enforce the ordinance by any appropriate means including the imposition of an award for money damages against either a landlord or tenant. It can order repairs to be made by either a landlord or a tenant and can initiate the investigation and/or conciliation of complaints associated with the leasing, conduct, or operation of a rental facility.

In addition to the creation of a Commission, the ordinance proposes that certain items be required in all leases. Required lease provisions include, among others: a) the offer of an initial term of at least one year; b) no waiver of landlord liability for negligence; c) Acknowledgement of the landlord's responsibility for maintenance of the premises in accordance with prevailing codes; d) Prohibition of confessed judgment; e) Prohibition of late charges exceeding 5% of rent; f) Prohibition of waiver of provisions of applicable law; g) Itemization of charges for damages; h) Handling of security deposits in accordance with Maryland law; i) Delivery of the premises in a clean, safe, and sanitary manner in accordance with code; j) Prohibition of a waiver of a trial; k) Provision for landlord access upon adequate notice for repairs, improvements, etc.; l) Allows termination of the lease in the event of an involuntary change of employment from the area.

Councilman Duncan asked if the notice of rent increase for sixty days will also apply to single family dwellings and also for the inclusion of only one rent increase per year. He also asked for the inclusion and he asked that the licensing fees be increased to cover the cost of administration. He asked when the ordinance might be ready. The City Attorney said the end of January is the

target date. The Mayor and Council asked that the staff proceed with the drafting of the ordinance. Councilwoman Hovsepian suggested the enforcement person be a community specialist who handles complaints. Councilman Tyner agreed and said he would much prefer staff effort to go through the Community Resources Department. It is best to split law making from law enforcement. Councilman Duncan agreed that a commission would be the best place to adjudicate problems rather than the Board of Appeals. Councilman Tyner asked that a good deal of care be given to the selection process and the Mayor added that the entire project be expedited.

Re: Information Items

The Mayor and Council noted the following items of information:

1. Memo re Exit from St. Mary's

Councilman Duncan said there is no left turn exit now on Veirs Mill Road and some accommodation should be made to assist those turning at the rear entrance.

2. Memo from Recreation and Parks re holiday decorations

Councilman Duncan said the Chamber of Commerce has no plan to assist with holiday decorations. He asked that other groups be contacted for 1983.

3. Memo re N.P.A.G., Area 3 - Membership List

4. Copy of letter to owner of Rockville Deli re licensing requirements

5. Memo re Montgomery College Parking Study

Councilwoman Hovsepian noted this is still in progress.

6. Letter to Judge Cahoon, re Courthouse Square safety

7. Memo from Director of Finance re Bond Issue

8. Memo from Board of Supervisors re Elections re joint registration

Councilman Duncan said good points were raised by the Board in favor of no joint registration. He did ask, however, that the Board consider some innovative way to increase registration and in turn increase voter turn out. He suggested that there be election day registration at each poll as one and he asked for more guidance from the Board. Mrs. Covey said she hopes that the Board could come up with some innovative ideas. Mr. Rausch commented that past efforts at automatic registrations did not produce more voters and actually those who made an effort to register and become informed were more valuable in the election process. He did note that it is a highly contested election or dissatisfaction with City affairs that causes a larger turn out. Mayor Freeland said he concurred with the Board's recommendation and with the current practices but did hope that the Board would bring suggestions forward for increase in voters. He thanked the Board for their support in the past.

9. Community Resources Status Report
Councilwoman Hovsepian thanked the department for this report.
10. Copy of letter to property owner re sign violation
11. Memo from Director of Planning re Update of Plan for Educational Facilities
12. Memo from Director of Community Resources re Holiday Park Senior Center
13. Memo from L&I re Attic Ventilation at North Farm

Re: New Business

1. Councilman Tyner drew the attention of the Council to a letter from Roger Titus concerning the Tillie Frank Task Force and the fact that no funding exists from the Maryland Municipal League for his participation on the task force. It is expected that the cost could be \$5,000 or more. The City Manager told the Council that this is critical legislation and it certainly needs the services of Mr. Titus.

On motion of Councilwoman Hovsepian, duly seconded and passed by unanimous vote of all present, the Council agreed to continue Mr. Titus' services but request reimbursement from the Maryland Municipal League for a portion of that share of Mr. Titus' expenses.

2. Councilman Tyner said the Maryland Municipal League held its meeting of the Montgomery Chapter last week and the City Manager has been released from the Secretary/Treasurer's job. He noted that the Mayor and Council are indebted Mr. Blick for all the services he performs for the League.

(At this time Councilman Tyner left the meeting.)

Re: Status Report on Tree Preservation and Enhancement Program

Councilman Duncan noted that this seems like an unnecessary and expensive program. He would prefer to see it shelved at this time. Councilwoman Hovsepian agreed it is a good idea but according to staff information the work, time and money that are involved could be much better spent.

On motion of Councilman Duncan, duly seconded and passed by unanimous vote of all present, the tree program was postponed indefinitely.

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Re: Work Session: Housing Policy

Councilwoman Hovsepian said although the work session is planned for this evening, with only three members of the council it is going to be difficult to proceed. Councilman Duncan suggested postponement. The Mayor said to do so could postpone the project for too long and he would like to see the City get on with it. The Saturday session that was held two years ago was too large to provide a good range of discussion and exchange. He would like to set a target date for full blown treatment and then set a time line for accomplishment. Arlene Simons, present in the audience, suggested that a task force be set up to examine it. After discussion it was agreed that Councilmembers Duncan and Hovsepian would head up this task force, examine the issues and come back with a proposed action plan. The Mayor noted that whatever the plan is the Mayor and Council will have to present it in a positive fashion to the community. Councilwoman Hovsepian said the task force should include representatives of the business community, a renter, a homeowner, a mortgage banker, etc. Mayor Freeland agreed and asked the task force start with the present housing policy report and the facts before them this evening, gather all the information possible, share it with the community, get staff support and most importantly develop a course of action. He said he does not like to see just a policy produced but an action plan for implementation that is so important for a policy to become a course of action. The Council agreed to this and Councilmembers Duncan and Hovsepian agreed to get on with the work immediately.

Re: Correspondence

The Mayor and Council noted the following items of correspondence:

1. M. Meyerson, re Rt. 355 traffic hazard

Councilwoman Hovsepian agreed that the striping is bad. The City Manager said he will point this out to the State Highway Commission.

2. P. Campbell, re neighborhood problems

Councilman Duncan asked if the staff is acting on this. The City Manager said the vehicles are being tagged for towing right now.

3. MML., County Chapter, invitation

4. Letters from WINX

5. CIUL, re Innovation Coordinator

6. K.C. Donaldson, commending City employee

7. MML, re insurance program

8. Sen. Paul Sarbanes, re nuclear disarmament resolution
Sen. Mac Mathias, re nuclear disarmament resolution
Councilwoman Hovsepian noted that both senators had acknowledged receipt of the material.
9. Dr. Katz, re New Mark Commons, re Dawson PRU
10. Mayor Miller, Somerset, re pollution problem
11. Chuck Zierdt, re Antique Car Award
12. K. Vengazo and residents of College Gardens re animal problem
13. E.R.C.A. re steering committee for Maryvale
14. D. Kettlestrings, re Nelson Street Deli license
Councilman Duncan asked what is happening here. The City Manager said the zoning is wrong and for that reason a carry out license is illegal. The Council agreed with this.
15. MML, re Enclave legislation
Councilwoman Hovsepian asked if the staff plans to pursue this at the state level. The City Manager said he will return with a report.

Re: New Business Con't.

3. Councilman Duncan said an excellent program was held yesterday at the Senior Center for the six month anniversary of the Center and Mr. Olson, hosting it did a good job.

4. Councilwoman Hovsepian said she represented the City at the People's opening in Twinbrook last week and they are a welcome addition to the neighborhood.

5. Mayor Freeland said it has come to his attention that clarification is needed on the Board of Appeals appointment that was done in October.

On motion of Councilman Duncan, duly seconded and passed by unanimous vote of all present, Karen Lechter was appointed to the unexpired term of Terri Donaldson. The Council discussed this appointment with Mr. Arkin, Chairman of the Board of Appeals and the staff was instructed to draw up the necessary legal documentation to clarify the ordinance as it deals with vacancies. Mayor Freeland said that in fact that this appointment is only for one meeting but it is his intention to appoint Ms. Lechter to a three year term when more of the Council is present.

6. Mayor Freeland drew the Council's attention to a letter from Councilman Tyner suggesting some additional material in the budget this year. The City Manager said he would prefer to go through budget plans with the

Mayor and Council this year and discuss several options, including those alternatives suggested by Councilman Tyner. The Mayor asked that a meeting be set no earlier than January, a separate meeting, not at a Council meeting, that would address Councilman Tyner's letter at that time for incorporation into the budget along with the City Manager's suggestions. Councilman Duncan asked that a summary be given by departments. Councilwoman Hovsepian agreed that the Council would like to know how many people in the various categories.

7. The City Manager said the Rockville Deli had finished its renovations in time to retain their liquor licenses but the Board of Licenses may still have some problem with them and will be acting upon it.

8. The City Manager said that Montgomery County has adopted a law for rabies vaccination for cats and it is very important and he would like to bring it to the Council's attention by having an ordinance for their action at the next meeting that would bring that law to the City. Mr. Glasgow said it is not necessary since the Rockville law already covers it. The Mayor asked that a newsletter article be published explaining how the County law applies in Rockville.

9. The City Manager said the New York Teacher's Retirement System is finishing up its agreement but it may not be finished for December 1 review. Mr. Titus will make it available to the Council when it is ready.

10. The City Manager said attorney Ferretti reported on the trees being cut down on Rockville Pike and being replaced with different trees. The City has revoked the owners use permit due to non-compliance. The Mayor said no use permit will be given until the trees are replaced.

Re: Approval of Minutes

On motion of Councilwoman Hovsepian, duly seconded and passed by unanimous vote of all present, the Minutes of Meeting No. 39-82, were approved as amended.

Re: Executive Session

On motion of Councilman Duncan, duly seconded and passed by unanimous vote of all present, the meeting was closed for executive session to discuss litigation.

Re: Adjournment

There being no further business to come before the Council in executive session, the meeting was adjourned at 1:30 a.m. to convene again in general session on Monday, December 6, 1982, at 8:00 p.m. or at the call of the Mayor.